

Appl. No. 09/940,371  
Am dt AF dated July 8, 2004  
Reply to Final Office Action of May 21, 2004

### REMARKS

The following remarks are submitted in response to the Office Action mailed on May 21, 2004. Claims 3, 20-21, 32, 44, 48, 59-60, 98-99, 122 and 150 are withdrawn from consideration, and claims 4, 9, 33, 38, 49, 54, 74-84, 106-117, 123, 129-148 and 151 are cancelled. Claims 1, 2, 5-8, 10-19, 22-31, 33-37, 39-43, 45-47, 50-53, 55-58, 61-73, 85-97, 100-105, 118-121, 124-128, 149 and 152-165 remain pending and under consideration. Claims 28, 118, and 164 have been amended as suggested by the Examiner. No new matter has been added and no new issues are raised by this amendment. Entry of the amendment, reconsideration, examination and allowance of the pending claims is respectfully requested.

As a preliminary matter, Applicants bring the Examiner's attention to the Revocation of Prior Powers of Attorney and Power of Attorney which was filed March 30, 2004. Although a customer number, 28075, was provided for a correspondence address, no such recognition has been made. Applicants request that the instant application be connected with the customer number provided.

### Claim Objections

Claims 28, 118, and 164 are objected to for informalities. The claims have been amended as suggested by the Examiner. No new matter has been added and no new issues have been raised by this amendment.

### Allowable Subject Matter

The Examiner indicated that claims 1, 2, 5-8, 10-19, 22-27, 46-48, 50-53, 55-58 and 61-73 are allowed; claims 87-89, 93-97, 125 and 153 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent format. Additionally, claims 28-31, 34-37, 39-45 and 164 would be allowable if rewritten to overcome the minor informality objections. Applicants respectfully thank the Examiner for this indication of allowable subject matter.

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### The 35 U.S.C. § 102 Claim Rejections

Claims 85-86, 90, 100, 103-105, 118-121, 124, 126-128, 149, 152, 154-158, 160-163, and 165 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,385,574 to Hauser et al. (hereinafter "Hauser et al."). Applicants traverse the rejection.

Independent claims 85, 118, 149, and 165 recite, among other elements, a cardioverter-defibrillator including a housing comprising a mixture of conductive and nonconductive materials. Such a mixture includes both conductive and nonconductive materials within the mixture composition. In other words, the conductive and nonconductive materials would be mixed or otherwise combined to form the mixture. In response to Applicant's arguments, the Examiner asserts that the limitation that the mixture includes both conductive and nonconductive materials does not appear in the claims. Applicants respectfully point out that independent claims 85, 118, and 149 clearly recite "a housing comprising a mixture of conductive and nonconductive materials", and thus do recite the limitation.

The Examiner also asserts that in paragraph 175 of the instant specification, Applicant states that the housing segments 510 and 512 can comprise a mixture of ceramic and titanium materials, but that in the next few sentences, state that housing segments 510 and 512 are made of titanium, insulating plates 518 and 524 are made of ceramic material, and conductive plates 520 and 522 are made of titanium. Applicants respectfully point out that the specification actually states, at page 87, lines 18-20, that "housing segments 510 and 512 can comprise a mixture of titanium and ceramic materials" (emphasis added). The specification also states, at page 87, lines 4-5, that "titanium can be mixed with the ceramic materials to cause the housing to appear darker" (emphasis added). Applicants respectfully submit that the instant specification clearly defines "mixture" as including both conductive and nonconductive materials, and thus the use of the term "mixture" in the claims is likewise clearly defined.

Hauser et al. fail to teach a housing containing a mixture of conductive and nonconductive materials. Rather, Hauser et al. teach that the housing may be titanium (conductive), and an insulative ceramic material may be sputtered onto the conductive outer surface of the body. Such an arrangement is not a mixture of conductive and nonconductive materials, but rather, would be a coating of ceramic material disposed over a portion of the titanium housing. MPEP § 2111.01, citing *In re Zletz*, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989),

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states that "the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification." As stated above, the instant specification does provide a specific definition of "mixture" as including both conductive and nonconductive materials. Applicants submit that the interpretation of "mixture" as defined in the specification must be used, and that this definition does not encompass a conductive material sputtered onto a conductive surface, as taught by Hauser et al.

As such, Applicants respectfully submit that independent claims 85, 118, 149, and 165 are allowable over Hauser et al. Also, dependent claims 86, 90, 100, 103-105; claims 119-121, 124, 126-128; and claims 152, 154-158, 160-163; which depend from independent claims 85, 118, and 149, respectively, are also allowable for the reasons given and because they include subject matter that further distinguishes them from the art.

#### The 35 U.S.C. § 103 Claim Rejections

Claims 91 and 92 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hauser et al. Claims 101-102, and 159 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hauser et al. in view of U.S. Patent No. 5,871,506 to Mower (hereinafter "Mower"). Applicants traverse the rejections.

As discussed above, independent claims 85, 118, 149, and 165 are allowable over Hauser et al. because each of these claims recites a cardioverter-defibrillator including a housing comprising a mixture of conductive and nonconductive materials, and Hauser et al. do not teach or suggest a housing comprising a mixture of conductive and nonconductive materials. As such, each of these claims, and claims which depend there from, are allowable over Hauser et al. Additionally, Mower does not teach what Hauser et al. lacks. Specifically, Mower fails to teach or suggest a cardioverter-defibrillator including a housing comprising a mixture of conductive and nonconductive materials. As such, claims 91, 92, 101, 102 and 159, which depend from independent claims 85 and 149, are allowable over Hauser et al. alone, or in combination with Mower. Reconsideration and withdrawal of the obviousness rejection of these claims is respectfully requested.

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**Conclusion**

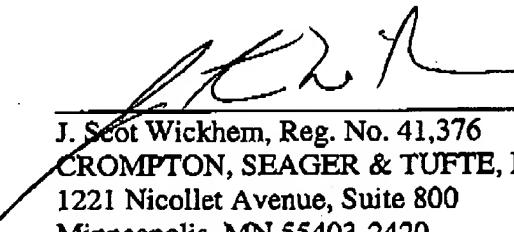
Reexamination and reconsideration are respectfully requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

Gust H. Bardy et al.

By their Attorney,

Date: July 8, 2004

  
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